

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

BRUCE ALAN DAVIDSON, JR.,

Petitioner,

v.

CIVIL ACTION NO. 2:14-CV-74
CRIMINAL ACTION NO. 2:09-CR-14
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Robert W. Trumble [Doc. 5]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Trumble filed his R & R on November 12, 2014, wherein he recommends this Court dismiss the petitioner's § 2255 petition with prejudice.

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); see ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Trumble's R & R were due within

fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that service was accepted on November 17, 2014 [Doc. 6]. No objections have been filed. Accordingly, this Court will review the R&R for clear error.

The R&R recommends dismissal because it is an unauthorized second or successive petition. Pursuant to 28 U.S.C. § 2244 and 28 U.S.C. § 2255, this Court is without authority to hear petitioner's second federal habeas petition without first seeking leave from the court of appeals. See *United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003).

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 5]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the petitioner's § 2255 petition **[Doc. 1]** be **DENIED** and **DISMISSED**. The petitioner may file a motion with the United States Court of Appeals for the Fourth Circuit for an order authorizing this Court to consider his application. This Court further **DIRECTS** the Clerk to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: December 22, 2014.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE